

MEMO ENDORSED



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April 4, 2025

VIA ECF

Honorable Gary Stein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Tyre Fred Newsome v. Gutierrez, et al., 24 Civ. 5265 (VSB)(GS)

Your Honor:

I am a Senior Counsel in the Office of Muriel Goode-Trufant, Corporation Counsel of the City of New York, and the attorney for Defendants Gutierrez, Lavigat, Pepdjonovic, Acevedo, and Ortega in the above referenced matter.¹ Defendants write in regard to Plaintiff's filings on April 1 and 2, 2025. (ECF Dkt. Nos. 40-42).

By way of background, Defendants filed a Motion to Dismiss the First Amended Complaint on February 12, 2025. (ECF Dkt. No. 34). The briefing schedule in the Notice of Motion directed Plaintiff to respond to by March 14, 2025, and Defendants to file their reply two weeks later, or March 28, 2025. (*Id.*). When Plaintiff did not file any opposition, Defendants wrote the Court and asked that it deem their Motion to Dismiss unopposed. (ECF Dkt. No. 39). On April 1, 2025, Plaintiff filed two memoranda of law opposing Defendants' Motion to Dismiss. (ECF Dkt. Nos. 40-41). The next day, without leave of Court, Plaintiff filed a Second Amended Complaint. (ECF Dkt. No. 42).

The oppositions that Plaintiff filed in response to Defendants' Motion to Dismiss are untimely. (*See* ECF Dkt. No. 34). However, to the extent the Court deems Plaintiff's oppositions timely and considers them, Defendants respectfully request that the Court allow

¹ This case has been assigned to Assistant Corporation Counsel Hannah Oleynik, who is presently awaiting admission to the Southern District of New York and is handling this matter under my supervision. Ms. Oleynik may be reached directly at (212) 356-2663 or by email at holeynik@law.nyc.gov.

them two weeks to file a reply in further support of their Motion to Dismiss, from April 1, 2025 until April 15, 2025. This timeline is consistent with the briefing schedule set forth in Defendants' Notice of Motion. (See id.).

However, as discussed *supra*, Plaintiff has also filed a Second Amended Complaint. The Second Amended Complaint brings new claims against the Defendants, and abandons most of Plaintiff's prior claims. Though Plaintiff has not complied with the requirements of Rule 15 of the Federal Rules of Civil Procedure in filing his Second Amended Complaint,² Defendants do not oppose him filing this Second Amended Complaint. Should the Court deem the Second Amended Complaint the operative complaint, and thus find Defendants' Motion to Dismiss the First Amended Complaint moot, Defendants respectfully request that the Court grant them thirty (30) days to respond to the Second Amended Complaint.³ Furthermore, should the Court find the Second Amended Complaint operative, Defendants respectfully request that the Court deny Plaintiff any further opportunity to amend his pleadings.

Defendants thank the Court for its time and consideration herein.

Respectfully submitted,

/s/ Joseph Zangrilli

Joseph Zangrilli

Senior Counsel

Special Federal Litigation Division

Cc: **VIA FIRST-CLASS MAIL**

Tyre Fred Newsome

66 St. Nicholas Place, 47A

New York, NY 10032

Pro Se Plaintiff

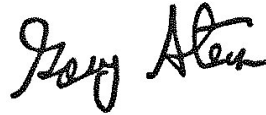
² Plaintiff has already amended his complaint once, and has not requested Defendants' written consent or the Court's leave to file a new complaint. (See ECF Dkt. No. 27). Further, even if Plaintiff had not already amended his complaint once, he filed his Second Amended Complaint outside of the time period proscribed by Fed. R. Civ. P. 15(a)(1).

³ In this event, Defendants' deadline to respond to the Second Amended Complaint would be May 2, 2025.

Plaintiff filed a Second Amended Complaint on April 2, 2025 without seeking leave of the Court (Dkt. No. 42), in violation of Rule 15(a)(1) of the Federal Rules of Civil Procedure. However, because Defendants do not oppose the filing of this Second Amended Complaint, the Court will grant Plaintiff leave to file the Second Amended Complaint, making the Second Amended Complaint at Dkt. No. 42 the operative complaint. Thus, Defendants' Motion to Dismiss the First Amended Complaint at Dkt. No. 34 (Dkt. No. 39) is hereby denied as moot. Defendants' response to the Second Amended Complaint is due no later than Tuesday, May 6, 2025. The Court advises Plaintiff that it will not permit further amendments absent a showing of good cause.

Date: April 9, 2025
New York, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Gary Stein", is written above a horizontal line.

HON. GARY STEIN
UNITED STATES MAGISTRATE JUDGE